

## SENATE BILL No. 178

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-37-2-2.1; IC 31-14-14-1; IC 31-17-4-1.

**Synopsis:** Custody and parenting time matters. Provides that if a paternity affidavit is executed, the mother and the man who is identified as the father share joint legal custody of the child, the mother has primary physical custody of the child, and the man who is identified as the father has parenting time in accordance with the parenting time guidelines unless another determination is made by a court. (Current law provides that a mother has sole custody unless another custody determination is made by a court.) Provides that a noncustodial parent is entitled to reasonable parenting time rights unless a court finds by clear and convincing evidence that parenting time might endanger the child's physical health or significantly impair the child's emotional development. (This changes the standard of proof under the current law.)

**Effective:** July 1, 2010.

**Steele**

January 5, 2010, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

## SENATE BILL No. 178

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 16-37-2-2.1, AS AMENDED BY P.L.146-2006,  
2       SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2010]: Sec. 2.1. (a) A paternity affidavit may be executed as  
4       provided in this section through:

- 5               (1) a hospital; or  
6               (2) a local health department.

7       (b) Immediately before or after the birth of a child who is born out  
8       of wedlock, a person who attends or plans to attend the birth, including  
9       personnel of all public or private birthing hospitals, shall:

- 10              (1) provide an opportunity for:  
11                  (A) the child's mother; and  
12                  (B) a man who reasonably appears to be the child's biological  
13                  father;  
14              to execute an affidavit acknowledging paternity of the child; and  
15              (2) verbally explain to the individuals listed in subdivision (1) the  
16              legal effects of an executed paternity affidavit as described in  
17              subsection (g).



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(c) A paternity affidavit must be executed on a form provided by the state department. The paternity affidavit is valid only if the affidavit is executed as follows:

(1) If executed through a hospital, the paternity affidavit must be completed not more than seventy-two (72) hours after the child's birth.

(2) If executed through a local health department, the paternity affidavit must be completed before the child has reached the age of emancipation.

(d) A paternity affidavit is not valid if it is executed after the mother of the child has executed a consent to adoption of the child and a petition to adopt the child has been filed.

(e) A paternity affidavit executed under this section must contain or be attached to all of the following:

(1) The mother's sworn statement asserting that a person described in subsection (b)(1)(B) is the child's biological father.

(2) A statement by a person identified as the father under subdivision (1) attesting to a belief that he is the child's biological father.

(3) Written information furnished by the child support bureau of the department of child services:

(A) explaining the effect of an executed paternity affidavit as described in subsection (g); and

(B) describing the availability of child support enforcement services.

(4) The Social Security number of each parent.

(f) A woman who knowingly or intentionally falsely names a man as the child's biological father under this section commits a Class A misdemeanor.

(g) A paternity affidavit executed under this section:

(1) establishes paternity;

(2) gives rise to parental rights and responsibilities of the person described in subsection (e)(2), including:

(A) the right of the child's mother or the Title IV-D agency to obtain a child support order against the person, which may include an order requiring the provision of health insurance coverage; and

(B) reasonable parenting time rights unless another determination is made by a court in a proceeding under IC 31-14-14; and

(3) may be filed with a court by the department of child services.

However, if a paternity affidavit is executed under this section, **unless**

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1 another determination is made by a court in a proceeding under  
 2 IC 31-14, the child's mother and person described in subsection  
 3 (e)(2) share joint legal custody of the child, the child's mother has  
 4 sole legal primary physical custody of the child, and the person  
 5 described in subsection (e)(2) has parenting time in accordance  
 6 with the parenting time guidelines adopted by the Indiana supreme  
 7 court. unless another custody determination is made by a court in a  
 8 proceeding under IC 31-14.

9 (h) Notwithstanding any other law, a man who is a party to a  
 10 paternity affidavit executed under this section may, within sixty (60)  
 11 days of the date that a paternity affidavit is executed under this section,  
 12 file an action in a court with jurisdiction over paternity to request an  
 13 order for a genetic test.

14 (i) A paternity affidavit that is properly executed under this section  
 15 may not be rescinded more than sixty (60) days after the paternity  
 16 affidavit is executed unless a court:

17 (1) has determined that fraud, duress, or material mistake of fact  
 18 existed in the execution of the paternity affidavit; and

19 (2) at the request of a man described in subsection (h), has  
 20 ordered a genetic test, and the test indicates that the man is  
 21 excluded as the father of the child.

22 (j) Unless good cause is shown, a court shall not suspend the legal  
 23 responsibilities under subsection (g)(2)(A) of a party to the executed  
 24 paternity affidavit during a challenge to the affidavit.

25 (k) The court may not set aside the paternity affidavit unless a  
 26 genetic test ordered under subsection (h) or (i) excludes the person who  
 27 executed the paternity affidavit as the child's biological father.

28 (l) If a paternity affidavit is not executed under subsection (b), the  
 29 hospital where the birth occurs or a person in attendance at the birth  
 30 shall inform the child's mother of services available for establishing  
 31 paternity.

32 (m) Except as provided in this section, if a man has executed a  
 33 paternity affidavit in accordance with this section, the executed  
 34 paternity affidavit conclusively establishes the man as the legal father  
 35 of a child without any further proceedings by a court.

36 SECTION 2. IC 31-14-14-1, AS AMENDED BY P.L.95-2009,  
 37 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 38 JULY 1, 2010]: Sec. 1. (a) A noncustodial parent is entitled to  
 39 reasonable parenting time rights unless the court finds **by clear and**  
 40 **convincing evidence**, after a hearing, that parenting time might:

41 (1) endanger the child's physical health and well-being; or

42 (2) significantly impair the child's emotional development.

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(b) The court may interview the child in chambers to assist the court in determining the child's perception of whether parenting time by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development.

(c) In a hearing under subsection (a), there is a rebuttable presumption that a person who has been convicted of:

- (1) child molesting (IC 35-42-4-3); or
- (2) child exploitation (IC 35-42-4-4(b));

might endanger the child's physical health and well-being or significantly impair the child's emotional development.

(d) If a court grants parenting time rights to a person who has been convicted of:

- (1) child molesting (IC 35-42-4-3); or
- (2) child exploitation (IC 35-42-4-4(b));

there is a rebuttable presumption that the parenting time with the child must be supervised.

(e) The court may permit counsel to be present at the interview. If counsel is present:

- (1) a record may be made of the interview; and
- (2) the interview may be made part of the record for purposes of appeal.

SECTION 3. IC 31-17-4-1, AS AMENDED BY P.L.68-2005, SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 1. (a) A parent not granted custody of the child is entitled to reasonable parenting time rights unless the court finds **by clear and convincing evidence**, after a hearing, that parenting time by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development.

(b) The court may interview the child in chambers to assist the court in determining the child's perception of whether parenting time by the noncustodial parent might endanger the child's physical health or significantly impair the child's emotional development.

(c) The court may permit counsel to be present at the interview. If counsel is present:

- (1) a record may be made of the interview; and
- (2) the interview may be made part of the record for purposes of appeal.

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